(P) (3)

C.S. 308 Single Bench

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

**Writ Petition NO. 936 /2006**

**PETITIONERS** :1 Jai Lal,
S/o. Dharam Singh
aged about 50 years
Caste-Kanwar

2. Chandrika
S/o. Dharam Singh
Aged about 35 years
Caste Kanwar

3. Aghanmati
S/o. Dharam Singh
Aged about 70 years

No.2 & 3
Through General Power of Attorney
Jailal S/o. Dharam Singh

All R/o. Village Kunkuni, Tahsil Kharsiya, District Raigarh (C.G.)

P.R. No. 939/05
Presented by Shri Basant Kanwar
dated

***VERSUS***

**RESPONDENTS** : 1. Libari
S/o. Badi, Aged about 85 years
Caste-Kanwar

2. Lami,
S/o. Badi, Aged about 90 years
Caste-Kanwar

Both R/o. Village Kunkuni, Tahsil Kharsiya, District Raigarh (C.G.)

3. State of Chhattisgarh
Through : the Collector
Raigarh (C.G.)

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA**

XI-HC-22

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

मामला क्रमांक WP 936/05 सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | **16.3.2005**<br>Shri Ratan Pusty, counsel for the petitioners.<br>Heard learned counsel for the petitioners on the admission of this petition.<br>By this writ petition under Article 226/227 of the Constitution of India the petitioners seek to question the correctness, legality and propriety of order dated 1.12.2004 passed by learned 2nd Additional District Judge, Raigarh thereby dismissing the Miscellaneous Appeal filed by the petitioners herein and affirming the order passed by learned 4th Civil Judge Class-II, Raigarh in Civil Suit No.23-A/2004 whereby learned Civil Judge has rejected the application of the petitioners herein filed under Order 39 Rules 1 & 2 of CPC for grant of temporary injunction, prohibiting the respondents from interfering with the possession of the petitioner herein and also from creating any third party interest over the suit property during the pendency of the suit.<br>Having heard learned counsel for the petitioners, I have perused the orders of trial court as well as appellate court. Both the courts have reached to the conclusion that the petitioners are not in possession of the disputed property.<br>Learned counsel for the petitioners has not been able to point out that finding of the trial court and appellate court is perverse or contrary to the record. Therefore, the petitioners have no case for interference by this Hon'ble Court under extra ordinary jurisdiction of Article 227 of the Constitution of India. | |

XI-HC-22

(44)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

**मामला क्रमांक** WP 936/05 **सन्** **200**

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

Apart from that learned counsel for the petitioners submitted that even the prayer regarding creating third party interest during the pendency of the suit has also been rejected and respondents have been made free even to transfer and alienate the disputed property in favour of third party during the pendency of the suit. Counsel further submits that if such a course is allowed then it will create further complication in the matter and there will be a multiplicity of the proceedings, therefore, an order to that extent be assailable.

As per finding of the both courts the property in question fell in the share of father of respondents herein, thereafter, on the respondents and property has been recorded in their names also, therefore, respondents cannot be prohibited from alienating the property. However, in the facts and circumstances of the case it will be just and proper and also in the interest of parties to pass an order to the effect that if the property in question is alienated or third party interest is created on the disputed property during the pendency of the suit then the same will be subject to the decision rendered by the courts in respect of the disputed property.

With this observation, this petition stands disposed of.

Consequently, M.W.P. No.749/2005 & I.A. No.1818/05 also stand disposed of.

Certified copy as per rules.

**Sd/-**
**L.C.Bhadoo**
**Judge**

Rashmi

21.2.06

21.2.06

(पीछे देखिये)